A Yes, sir.
Q Were you subpoenaed?
A Yes, sir.
Q By whom were you subpoenaed?
A Mr. Thompson.
Q Is that me?
A Yes, sir.
Q All right. I direct your attention again or now to the month of January 1955, specifically on or about January 28, 1955. Did you testify in a hearing involving the Better Monkey Grip Company on that date?
A Yes, sir.
Q Were you subpoenaed?
A Yes, sir.
Q By whom?
A Mr. Thompson.
Q That's me?
A Yes, sir.

* * * *

Q (By Mr. Thompson) All right, in view of the ruling of the Examiner and further in view of the doubt he has expressed, I think I will ask you, Mr. Whaley, a few more questions about such testimony to be sure that they are included in this record. Mr. Whaley, I direct your attention to the month of April 1954. Before I ask you a question concerning the month of April, I would like to have you tell me where in the plant you worked.

A Mainly it was on the dock and in the warehouse.
Q Did you have an office?
A Yes, sir.
Q Did you share the office with anyone during the month of April 1954?
A Yes, sir.
Q With whom?
A Garland Talley.
Q Who was Mr. Talley?
A He was a foreman at the plant.
Q During the month of April, did you hear Mr. Talley or anyone else connected with the company make any comments concerning the union?
A Yes, sir.
Q Where were you when you heard such comments?
A I was in the office.
Q Who else was present?
A Jack Everett, Garland Talley and myself.
Q Who is Jack Everett?
A He's — at that time he was plant manager.

TRIAL EXAMINER:
Let me get this straight. One Mr. Everett has been mentioned as president.

MR. THOMPSON:
Four of them.

MR. BONNEY:
There are four of them, Mr. Examiner.

TRIAL EXAMINER:
This is another one, Jack Everett?

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MR. THOMPSON:
Yes, sir.

TRIAL EXAMINER:
All right; sorry.

Q (By Mr. Thompson) What did you hear said?

A I heard Jack say to Garland that he would fire everyone that signed a union card if it took him ten years to do it, and he had a good memory.

Q Did you hear any further conversations?

MR. BONNEY:
We want to object to this evidence and all like it —

A Yes, sir.

MR. BONNEY:
Can it be understood for the record that all these questions are objected to by the respondent?

TRIAL EXAMINER:
I will grant you a continuing objection and exception.

Q (By Mr. Thompson) Did you hear any further conversation?

A Yes, sir.

Q How long after the first one did you hear another conversation?

A About two or three days later.

Q Where did that take place?

A In the same office.
Q Who was present?
A Jack, Garland and myself.
Q What was said?
A He said he knew there was six of them leaders that started

this union and he knew of three of them and if he knew the other three, why, he would let them go now.
Q Who was doing the talking?
A Jack was doing the talking.
Q All right. Now, I direct your attention to the period between the first hearing in July 1954, and the second hearing in January 1955. During that period, Mr. Whaley, did any representative of the company say anything to you about the testimony you had given?
A That would be the time that they called me in the office.
Q Just tell us what happened and when it happened. First answer my question; did any representative of the company say anything to you?
A Yes, sir.
Q About when did it take place?
A About the 7th, 8th and 9th of September.
Q Was that 1954?
A Yes, sir.
Q Who, Mr. Whaley?
A The first day it was Mr. Everett.
Q Which Mr. Everett?
A Senior.
Q All right. Tell us what happened.

A He wanted to know if I would withdraw my statement in saying that I had decided that Jack said what he did in a

joking manner or that he didn't mean what he had said.

Q What did you say, if anything?

A I told him that I couldn't do it because I thought it would be lying if I made that kind of a statement and it was the truth the way I heard it, that is, I heard it direct, you know, and it was, I actually heard it and if I went back on my word, why, I felt like that I would be lying, I would rather not do it.

Q I see. That was on the 7th of September?

A Seventh, yes, sir.

Q And you also mentioned, the 8th. What happened on the 8th?

A I was called back into the office and Mr. Everett told me that Mr. Bonney wanted to talk to me and on that he wanted Mr. Bonney to talk to me about what we had talked about the day before.

Q Did you talk to Mr. Bonney about that?

A Yes, sir.

Q What did you tell Mr. Bonney, if anything?

A Well, he kept on wanting me to tell him the truth about the situation and he wanted to know if I wouldn't change my statement and that they would draw up a plan for me to sign that if I didn't think Jack said that in a joking manner or did I — that I had decided that he didn't mean what he had said.

Q What did you say, if anything?

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A I still refused to do it because I thought I would be lying against the statement that I had already made and that I knew it was so because I had heard him say it myself, and I wouldn't go back on the testimony because I didn't think it was right to be.

Q What happened on the 9th of September, Mr. Whaley?

A Well, they had given me until the next day to make up my mind whether or not I wanted to go through that procedure and sign those, sign this withdrawal statement, and I again refused to do it.

Q All right. After the 9th of September was anything else ever said to you again about your testimony until this hearing in January 1955?

A There was the day before the hearing.

Q January '55?

A Yes, sir.

Q Where did that occur?

A That occurred in Jack's office.

Q Who talked to you then?

A Mr. Bonney.

Q What did he say to you at that time?

A He wanted to know if I was still — had my mind made up to go through with it like I said I would and wanted to know if I would consider changing my statement, and which I wouldn't do it.

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Q Did you testify at the hearing in January?

A Yes, sir.

Q All right. After the hearing in January 1955, until

the time your employment was terminated, did any company official say anything further to you about your testimony or anything else concerning the hearings?

A No, sir.

Q All right. I'd like to show you a letter, Mr. Whaley.

MR. THOMPSON:

I would like to have the reporter mark for identification as General Counsel's Exhibit 2 a letter dated February 18, 1955, on the letterhead of the Better Monkey Grip Company, addressed to Mr. R. L. Whaley, signed by Mr. L. M. Everett.

• • • •

Q (By Mr. Thompson) Would you look at that, please, Mr. Whaley. Would you tell us what that is, please, Mr. Whaley.

A That's a letter that I got telling me that I was being terminated as of the date of this letter.

Q I see. How was that letter delivered to you?

A It was delivered to me by letter. It was in an envelope and it was given to me.

Q Who gave it to you?

A Garland.

• • • •

Q (By Mr. Thompson) Before you received this letter, Mr. Whaley, had you been notified that you were to be terminated?

A No, sir.

Q Had there been any complaints made about your work or anything else?

A Yes, sir.

Q When did that happen?

A Not my work, but about what I had talked about going through the plant, I think I got a letter to that effect, too.

Q When was that letter, do you remember?

A I don't remember the exact date.

Q All right. I show you a letter about that.

MR. THOMPSON:

I would like to have this marked for

identification as General Counsel's Exhibit 3.

* * * *

Q (By Mr. Thompson) This is a letter dated July 21, 1954, addressed to Mr. Robert Whaley, signed by Jack Everett. I would like to have you tell us, Mr. Whaley, if that's the letter to which you are referring?

A Yes, sir.

Q All right. Other than that letter and the notice of termination, did you receive any other warning of any

nature from the company from the date of this letter until the time you were discharged?

A No, sir.

TRIAL EXAMINER:

Mr. Whaley, did I understand you to say that you had joined the Upholsterers' Union?

THE WITNESS:

I just signed an authorization card.

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TRIAL EXAMINER:

And that was in 1954?

THE WITNESS:

I think so.

CROSS EXAMINATION

Q (By Mr. Bonney) Mr. Whaley, you say that you were only warned once and that was by this letter dated July 21 warning you to quit circulating rumors through the plant, is that correct?

A Yes, sir.

Q Now, prior to that, didn't Mr. Tommy Everett, the vice president of the company who is sitting right here,

call you in his office and talk to you about some other things that were unsatisfactory to Monkey Grip?

A That was prior to the hearing, wasn't it?

Q Yes, sir. Is that true, he did call you in and talk to you?

A Yes, sir, he called me in and talked to me in the office.

Q Didn't he at that time complain of your circulating rumors around that Monkey Grip was ruining your health maliciously?

A Yes, sir.

Q Didn't you admit to him that you had said some things like that?

A Not ruining my health, I didn't, because I didn't say it that way.

TRIAL EXAMINER:

Because what?

THE WITNESS:

Because I didn't say it that way.

Q (By Mr. Bonney) But he did tell you that he wanted you to quit circulating those kind of rumors, didn't he?

A He said I would get in serious trouble if I gave false rumors like that over the plant that wasn't so.

* * * * *

Q Mr. Whaley, you said that Mr. Everett talked to you right after you had testified in the first hearing and tried to get you to change your testimony?

A Yes, sir.

Q Did Mr. Everett try to get you to tell — Did he tell you to tell a lie or anything?

A No, sir, he didn't ask me to tell a lie.

Q Did he disbelieve your testimony and try to get you to admit it, that it was not true?

* * * *

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A The way I understood it, he said he didn't think it would be telling a story to make that kind of a statement and if I did, why, that would be the end of the trial, the end of the trial, the end of all it, you know, there wouldn't be anything else done about it if I would do that.

* * * *

TRIAL EXAMINER:

What did he say to you, as nearly as you can remember?

THE WITNESS:

Well, he wanted me to, you know, they wanted to —

TRIAL EXAMINER:

No; just give us his words as nearly as you can, his exact words as nearly as you remember.

THE WITNESS:

Well, he said if — he wanted me to change those — say that Jack didn't mean what he had said or that he said in a joking manner and there would be a form written up

for me to sign, you know, to that effect, and that that would be the end of the hearing and close the case, everything would be over and there wouldn't be any more said about it.

* * * *

Q (By Mr. Bonney) Didn't he tell you that you were mistaken about that, that that wasn't even said?

A Well, he said he had two against my one that it wasn't said and —

Q So he didn't believe it, did he?

A Sir?

Q He did not believe it, did he?

A He didn't believe it was said.

Q No, and he was trying to get you to admit that you didn't say it, wasn't he?

A May I have that question again?

Q He was trying to get you to admit that it really wasn't said, wasn't he?

A Well, I don't know exactly whether he did or not but —

Q All right, now, then when I talked to you the next day I tried to get you to admit that it wasn't even said, didn't I?

A You said you figured I just imagined that I heard it, you said that I had a great imagination and I imagined I heard it when I really didn't hear it, and I told you that I did because I was there in the office and I heard it direct, I heard Jack tell Garland that.

Q All right, that's enough of that. Now, did anybody threaten to fire you if you didn't change that statement?

A Well, nothing only where he said he had two against my one, if he could prove me out a liar he wouldn't need my services any more.

Q Who said that?

A Mr. Everett.

Q You didn't testify to that in the other hearing, did you?

A Well, no, sir, I didn't.

Q You just thought of that, didn't you?

A No, sir.

Q You are pretty mad at the Everetts, aren't you?

A No, sir.

Q Did you care if they fired you? Did it make you mad when they fired you?

A No, sir, because I figured there was a misunderstanding there.

Q As a matter of fact, you weren't able to work anyhow, were you?

A At that time I was.

MR. THOMPSON:

I object to the question.

Q (By Mr. Bonney) You were able to work?

A I was working.

Q Were you able to do that work?

A As far as I know I was, what I was supposed to do.

Q Weren't you going around the plant complaining about your health and them ruining your health?

A No, sir. I said I spent the best part of my life there.

Q You said that you could actually do that work then?

A At that time, yes, sir.

Q Did you have to handle heavy bales of rubber?

A I didn't have to at that time.

Q Did you do it?

A Part of the time, when I couldn't get the help that I asked for.

Q Well, right after you quit, didn't you go to a lawyer and file a suit against the Workmen's Compensation Company for total and permanent disability?

MR. THOMPSON:

I object to the question; wholly immaterial to this proceeding.

MR. BONNEY:

It isn't immaterial, Mr. Examiner, because it's for the purpose of impeaching this witness. He has testified that he could do the work and we want to show that he couldn't, and impeach him.

TRIAL EXAMINER:

I'll permit the question.

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Q (By Mr. Bonney) Didn't you file such a suit claiming total and permanent disability?

A Not total, no, sir.

MR. BONNEY:

We wish to offer in evidence at this time Exhibit 1 for respondent, I'll have to furnish another copy.

MR. THOMPSON:

Can you have two made, Mr. Bonney, one for me?

MR. BONNEY:

Yes, I will. This is a petition in the District Court in a suit filed by Mr. Whaley against the Traders and General Insurance Company, which is a suit for total and permanent disability, filed on the — I'll have to read the filed date on it.

MR. THOMPSON:

Second day of June 1955. General Counsel objects to the receipt of this document. It is wholly and absolutely immaterial to this proceeding, introducing in this proceeding a collateral issue involving a proceeding in a State Court, wholly and completely irrelevant and immaterial to this proceeding.

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MR. BONNEY:

It's introduced for the purpose of impeaching the witness.

TRIAL EXAMINER:

Well, there's one allegation here in Paragraph 3 of this complaint to the effect that plaintiff, meaning Mr. Whaley, after February 21, '55, "had been unable to perform the normal task of a workman in his employment and has been unable to do any manual work or labor whatsoever."

Paragraph 7 of the said complaint relates the nature of his injuries and concludes, "As a result, plaintiff has lost the use of his back, as a matter of fact, the ability to do any work whatsoever."

In Paragraph 8 he refers to his inability to do or perform any kind or character of manual work to which he has been accustomed, and in Paragraph 9 he says that if he should be mistaken in that he is not totally and permanently disabled then he alleges that he is disabled to the extent of at least 75 per cent.

I don't know. I'll overrule the objection and receive Respondent's Exhibit 1 over that objection for whatever it's worth.

* * * *

MR. BONNEY:

We offer the exhibit to impeach the witness' testimony.

TRIAL EXAMINER:

Yes, I understand that it is directed to the credibility of the witness, and that's the reason I am receiving it.

Q (By Mr. Bonney) Now, Mr. Whaley, I believe you said that you did not claim that you were totally and permanently disabled in your suit, is that right?

A I don't know exactly how the lawyers put it in there, because I didn't — I didn't see any of the reports on it or anything that they put in and I didn't sign any kind of a report of any kind.

Q You authorized them to file the suit, did you?

A Just authorized them to file the suit where I was hurt and how I was hurt.

Q They were authorized to file that petition for you there, were they not?

A Yes, sir.

Q Now, then, getting back to this meeting that Mr. Tommy Everett had with you, where in he told you that he wanted these rumors stopped regarding ruining your health, that was prior to the first hearing, wasn't it?

A I believe it was. I am not sure.

Q And at that time, that same time, didn't you tell him that you thought you were going to get fired any time because you were engaged in union activities?

A I told him that according to what Jack said that I would be.

Q And didn't he tell you at that time that nobody would ever be fired because they were in the union?

A Yes, sir, that's what he told me.

Q And don't you know, as a matter of fact, that at the

time you left there that there were a lot of employees that were in the union that were still there?

A Yes, sir.

Q And you know that the Everetts knew they were in the union, don't you?

A Part of them I do, yes, sir.

Q And they are still there, aren't they?

A Part of them, yes, sir.

Q Now, isn't it true that you also tried to circulate a rumor right after the first hearing that the union had lost the election, but they had won a pay raise because in a few days everybody was going to get a raise?

A No, sir, I didn't say that.

Q You didn't say that at all?

A No, sir.

Q Well, you could have said it and forgot it, couldn't you?

A I don't think so.

Q You were fighting management pretty much, weren't you?

A I don't think so, not too much.

Q Well, could you lift those heavy bales of rubber just before you quit?

A Well, I had to whether I felt like it or not.

Q Did you fall down and injure yourself just before that, just before you were discharged?

A Yes, sir.

Q Did you hurt your back when you did that?

A Yes, sir.

Q Was that an old back injury that you reinjured?
A No, sir.

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REDIRECT EXAMINATION

Q (By Mr. Thompson) Mr. Whaley, was Tom Everett your boss out there at the plant, actually?
A No, sir.
Q When he talked to you last year, that you testified about, do you remember what his job was at that time?
A He was sales manager.
Q Who was your boss?
A I suppose Jack Everett was.
Q He was in the production end of the business, is that right?
A Yes, sir.
Q Did Jack ever say anything to you directly concerning any alleged rumors?
A No, sir. Jack and I didn't have any conversation together.
Q Just had the conversation with Tommy that time, is that right?
A Yes, sir, I just had the conversation with Tommy.
Q Did you say anything to Tommy at the time you talked to him concerning the things you had overheard between Jack and Garland?

A Yes, sir, I told him that — when he told me about the rumors going through the plant that wasn't so, I told him I knew there was one of them so because I had heard it myself.

* * * *

TRIAL EXAMINER:

Yes; I will let him answer.

Do you remember the question, Mr. Whaley?

THE WITNESS:

Yes, sir, and I told him that I knew that one of the rumors was so because I heard Jack say it in his own words, heard it direct from Jack talking to Garland, and that was on the comment that he would fire everybody that signed the union card if it would take him ten years to do it, and he had a good memory.

Q (By Mr. Thompson) Did anybody else connected with the company other than Tom Everett and the things about which you have testified and the letter you received, which is in evidence, ever say anything to you about anything connected with rumors or anything else like that?

A No, sir.

Q Did any official of the company ever intimate to you that they felt you couldn't do your work properly?

A No, sir.

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Q In connection with the document that has been introduced in evidence as Respondent's Exhibit 1, the petition filed in your behalf in the State Court, did you ever actually read that over, Mr. Whaley, before it was filed by your attorneys, this document right here, Respondent's Exhibit 1, this petition filed in the Workmen's Compensation case?

A No, sir, I haven't seen anything.

Q I see. So this petition was filed by your attorneys?

A Yes, sir.

Q And you didn't see it before it was filed?

A I haven't seen anything, no, sir.

MR. THOMPSON:

I point out to the Examiner, that it's signed only by someone purporting to be Fred Harless, attorney for plaintiff.

TRIAL EXAMINER:

Is it a verified petition?

MR. THOMPSON:

No, sir, it's not that I can see. It's not a verified petition.

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TRIAL EXAMINER:

Just to satisfy my curiosity, if nothing else, who is Mr. Everett, Mr. L. M. Everett, Sr.?

MR. THOMPSON:

L. M. Everett, Sr., was formerly the president of the Monkey Grip —

MR. BONNEY:

Chairman of the Board.

MR. THOMPSON:

And chairman of the board and now does not actively participate in the business at all. . . .

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MR. THOMPSON:

General Counsel does not intend to call further witnesses, but before he rests he would like to direct

the Examiner's attention to certain dates and ask that he take judicial notice of these dates because it is felt that the dates are significant in determining the merits of this case. First, the date of the original hearing, July 17 and 19, 1954, in Case 16-CA-742. The date that the original Intermediate Report was issued in that case, in 16-CA-742, which was August 27, 1954, IR 518. Next the date of the respondent's motion to remand, which was September 18, 1954. Next the date of the remand hearing, January 27 and 28, 1955.

TRIAL EXAMINER:

Will you explain to me, please, what the remand hearing — there was a hearing after remand before Mr. Whittemore?

MR. THOMPSON:
Two hearings before Mr. Whittemore.

TRIAL EXAMINER:
You said the remand hearing.

MR. THOMPSON:
The first remand hearing, then, I'll put it that way. There was a remanded hearing before Mr. Whittemore on respondent's motion to adduce additional testimony held on January 27-28, 1955. Last the date of the supplemental Intermediate Report in that case. That's IR 639, which is February 9, 1955.

TRIAL EXAMINER:
What was that date?

MR. THOMPSON:
February 9, 1955.

TRIAL EXAMINER:
The hearing on remand was January 27 and Intermediate Report February 9.

MR. THOMPSON:
That's right. I requested you take judicial

notice of those dates and at the proper time argument will be made by counsel for General Counsel concerning the significance thereof.

TRIAL EXAMINER:

I suppose they are all a matter of record.

MR. THOMPSON:

I think they are, yes, sir.

TRIAL EXAMINER:

Very well.

* * * *

MR. BONNEY:

At this time respondent would like to renew the motion filed herein at the beginning of this proceedings, and in connection therewith would like to say that it is stipulated and beyond any dispute that Whaley is or was at the time he was discharged a supervisor and not an employee and therefore that the testimony does not show in any respect that any violation has been committed by Better Monkey Grip Company under Section 8 (a) (4), since that section applies only to employees as defined in the Act, which specifically excludes supervisors, that is, the definition specifically excludes them, and the wording of Subsection (4) uses the word employee, the same word which is defined in the Act; for the further reason that there is no evidence in the record of any kind that under Section 8 (a) (1) that any other employees who were actually employees as defined in the Act were deprived of their rights to organize or do the other things that are guaranteed in that subsection. There is no evidence that even there was any effort to organize. There is no evidence that there is any mention or any endeavor

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or any thought even of organizing at the time of Mr. Whaley's discharge, and so we think that the Upholsterers' International, the complainant, has wholly failed to make a prima facie case.

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ALTHA LUCILLE CRIBBS,

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Bonney) . . .

• • • •

Q Where do you work?
A At Better Monkey Grip.
Q How long have you been employed there?
A Eight years this past June.
Q Do you know Robert L. Whaley?
A Yes, sir.

• • • •

Q (By Mr. Bonney) Were you employed there the first part of September 1954?
A Yes, sir.

Q Did you overhear a conversation between Mr. Whaley and someone else about that time?

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A Yes, sir.

Q State whether or not that conversation was made before or after a hearing before the National Labor Relations Board. Was it made before or after that hearing, or do you know?

A I think it was after.

Q Will you state what you heard Robert Whaley say at that time?

A He said if the union hadn't helped any way it had brought us a raise, we would get a raise on the next pay check.

Q Who did he tell that to?

A Another girl and myself.

Q Was she employed there in the plant, too, the other girl?

A She was then.

Q What was her name?

A Opal McElroy.

Q Did the raise that he was talking about materialize?

A No, sir.

Q Did you tell anyone or any of your superiors in the plant about that conversation at a later date?

A Yes, sir.

Q Was Mr. Whaley employed there at the time you related that conversation to management?

A Yes, sir.

Q Did you believe what Mr. Whaley was saying when he said it?

MR. THOMPSON:

I object; it calls for an opinion.

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MR. BONNEY:

The purpose of that testimony is to attack the credibility of Mr. Whaley. I want to get into another line of testimony now.

TRIAL EXAMINER:

I'll permit

Q (By Mr. Bonney) Did you believe what he said when he said it?

A No, sir.

Q Why didn't you believe what he said?

A I didn't think we would.

Q Did Mr. Whaley have a reputation for truth and honesty in the plant?

A No, sir.

Q Did he have a reputation for not telling the truth?

A Yes, sir.

Q Is that the reason you didn't believe it?

A Yes, sir.

MR. BONNEY:

Your witness.

CROSS EXAMINATION

Q (By Mr. Thompson) How long did you say you had known Mr. Whaley, Miss Cribbs?

A The length of time I had worked at the plant.

Q How long was that?
A I worked there eight years this past June.
Q Where did you work in the plant, Miss Cribbs?
A In the packing department.

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Q How well did you know Mr. Whaley?
A As an employee I knew him there at the plant.
Q How many times a day did you see him working there?
A Well, I wouldn't know about that; several times.

* * * * *

Q Now, when did you say this conversation took place where you overheard Mr. Whaley say something about a raise? When did it take place?
A In the late summer.
Q Late summer?
A Yes, sir.
Q What year was that?
A In '54.
Q How far were you from Mr. Whaley when you heard this said?
A We were just standing talking like this man was Mr. Whaley.
Q I see. Were you talking to Mr. Whaley yourself?
A Yes, I was talking in the conversation.
Q What time of day was it?
A I don't remember.
Q Somebody else was there at the same time, I believe you said?

A Yes, sir.

Q Was it in the packing department where it took place?

A No, sir, it was in the warehouse, inventory.

Q Exactly what did he say, Miss Cribbs?

A He said if the union hadn't helped in any way it would bring us a raise.

Q Did you tell him you didn't believe that?

A Yes, sir.

Q Were you at that time in favor of the union, Miss Cribbs?

A Yes, sir.

Q Have you ever been in favor of the union?

A No, sir.

Q Were you strongly opposed to the union?

A Yes, sir.

Q Did you know that Mr. Whaley was in favor of the union?

A I thought so.

Q But you weren't in favor of it?

A No, sir.

Q Did you consider that you were friendly with Mr. Whaley while he was working out there?

A I tried to be.

Q Do you know where Mr. Whaley lives?

A Well, I don't know the address. I knew he lived at Arlington.

Q Did you ever happen to visit Mr. Whaley out in Arlington?

A No.

Q So the only connection you ever had with Mr. Whaley was

right there at the plant, is that right?

A That's right.

Q Did you hear anybody else say anything about a raise or anything like that because of this union?

A No, sir, not that I recall.

Q You didn't hear anybody else except Whaley, is that correct?

A No name that I can think of.

Q Well, do you remember ever hearing anybody else say it, whether you remember their name or not?

A Nothing only the one, the girl that was out there with me, we were talking about it.

Q I asked you the question did you ever hear anybody else say anything about the union getting the employees a raise?

A No.

Q The answer was no?

A I think I understand you that it would be no. I don't know whether I do or not.

Q Let's get it perfectly clear now, I am not trying to confuse you. I will ask you over again. Did you ever hear anyone at the plant besides Whaley make any reference to the union getting the employees a raise?

A No, sir.

Q You are sure of that? Are you sure of that?

A Yes, sir.

Q Isn't it a fact, Miss Cribbs, that there for a while dur-

ing this organizing campaign it was pretty common talk that

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one of the things the union was going to try to do was get the employees a raise?

A I didn't talk to very many of them.

Q Well, answer my question, please. Isn't it a fact that during this organizing campaign in the spring of 1954 and on through there and July, that it was pretty common talk around the plant that one of the things the union was going to try to do was to get the employees a raise?

A Well, I'll say yes, sir.

Q Then you had heard somebody else talk about raises besides Whaley?

A Not no name that I know of.

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Q (By Mr. Thompson) Other than the conversation concerning the raise you heard Whaley talk about, on what do you base your opinion that Mr. Whaley's reputation at the plant for telling the truth was not good?

A I don't understand.

TRIAL EXAMINER:

Well, now, you testified that Mr. Whaley's reputation for truthfulness at the plant, so far as you knew, was not good. Mr. Thompson is simply asking you in small words why do

you say that. What your reason for that belief, what do you base your statement on?

THE WITNESS:

Well, the only thing I could base it on was that I just didn't believe that what he was telling.

TRIAL EXAMINER:

We are talking about reputation, which is something else. Reputation is what other people in the immediate vicinity, the neighborhood — now we are talking about the plant.

THE WITNESS:

They wouldn't believe him.

TRIAL EXAMINER:

Why do you say that?

Q (By Mr. Thompson) Why?

TRIAL EXAMINER:

Not why they wouldn't believe him, but why do you say they wouldn't believe him?

MR. BONNEY:

May I suggest that it be asked why she knows they wouldn't believe him?

MR. THOMPSON:

I would like an answer to my question upon what she bases her opinion, if I can get it.

MR. BONNEY:

She doesn't understand the question, I don't believe.

TRIAL EXAMINER:

I don't know.

Q (By Mr. Thompson) It's been phrased three or four times. I will try it once more. Miss Cribbs, listen carefully to what I am asking you. I am merely asking you on what do you base your statement that Whaley's reputation for telling the truth was bad. What is the basis for your statement? You said it was bad, what's the basis for your saying that it was bad?

(No response.)

MR. THOMPSON:

Apparently I am not going to get an answer to this question, Mr. Examiner.

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REDIRECT EXAMINATION

Q (By Mr. Bonney) Miss Cribbs, at the time you heard Mr. Whaley say that there was going to be a raise that the union had gotten for the employees, did he say when that raise would be effective?

A In the next pay check.

Q Did he state that as a direct statement of fact or did he qualify it with a maybe or just what did he say with respect to it?

A He said it direct, that he thought that it would be, the way I understood it.

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Q Have you ever heard anybody else in the plant state over the period of years you have known Mr. Whaley that they didn't believe him?

A Yes, sir.

Q Over how long a period have you been hearing that, that people didn't believe him?

A A year or two.

Q Have you heard more than one person say that?

A Yes, sir.

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RECROSS EXAMINATION

Q (By Mr. Thompson) You said you had heard more than one person say that they didn't think Whaley told the truth. How many more than one, Miss Cribbs?

A I couldn't tell you.

Q Was it more than one?

A Yes, sir.

Q Was it more than two?

A I wouldn't tell you any number at all, because I don't know.

Q All right. Who has told you that they didn't think Whaley had a good reputation for telling the truth?

Answer, please.

A I don't know.
Q You don't know?
A No, sir.

* * * *

LILA BELLE MAGEE,
a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Bonney) Will you state your name?
A Lila Belle Magee.
Q Where are you employed?
A Better Monkey Grip.
Q How long have you been employed there?
A Five years last June.
Q Do you know Miss Cribbs, who just testified?
A Yes, sir.
Q Do you know Mr. Whaley?
A Yes, sir.
Q I'll ask you if you heard Miss Cribbs' testimony just a moment ago.

A Yes, sir.
Q Did you hear what she said with respect to a conversation that Mr. Whaley had with her when he told her that the union had gotten the plant a raise and that it would

be effective on the next pay check, did you hear her testify to that a moment ago?

A Yes, sir.

Q I'll ask you whether or not, then, before today you have ever heard of that conversation? Have you heard of that conversation before right now today?

A What, about that?

Q Yes.

A Yes, sir.

Q Well, will you tell the court exactly when you heard that, approximately.

A Well, it was — wasn't but a few days after he told it that she came and told me about it.

Q What did she tell you about it?

A She told me what Bob had said about the raise.

Q Did she state when it was supposed to be effective?

A Yes, on the next pay day.

MR. THOMPSON:

I object to this line of testimony. It is completely and absolutely hearsay with respect to the issues of this case, it's immaterial.

MR. BONNEY:

The purpose of the testimony is to show that

Miss Cribbs heard this and told someone else about it before today, it's not an after thought, it's corroborative of the other testimony.

MR. THOMPSON:

I still object to it. It is hearsay and immaterial, Mr. Examiner. I can't see it has any bearing upon this particular question at all. It's testifying as to something the witness told her, not something she herself heard.

MR. BONNEY:

We are not trying to prove the truth of it; we are trying to prove that she did tell her and that's the only purpose.

TRIAL EXAMINER:

Yes, I think to that extent it's all right. I will permit the answer to stand.

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ROBERT L. WHALEY,

a witness called by and on behalf of the Respondent, being previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Bonney) . . .

Q Now, Mr. Whaley, I believe you testified this morning that you had a conference with Mr. L. M. Everett, the president of the company at that time, in which he talked to you

about changing your testimony in the hearing that you testified in, is that right?

A Yes, sir.

Q Did I understand you correctly when you told me on cross examination that at that time Mr. Everett, L. M. Everett, told you that if you didn't change your testimony, that you would lose your job?

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A No, sir.

Q You didn't say that?

A Not according to the testimony, no, sir.

Q Well, he did not tell you that, then, is that right?

A The only way he told me was that he had two against my one and if he could make me out a liar, why, he wouldn't need my services any more.

Q Well, did he tell you at that time that he wanted you to tell the truth?

A Yes, sir, but I didn't feel like I was telling the truth if I made the statement that he wanted me to make.

Q Well, he did tell you in so many words that he wanted you to tell the truth, didn't he?

A Yes, sir, he wanted the truth.

Q And so he thought that you weren't telling the truth, didn't he?

A Well, I don't know about that, whether he did or not.

Q Well, he told you to tell the truth, didn't he?

A Yes, sir, he told me to tell the truth.

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Q Now, Mr. Whaley, you received a written letter that's already in evidence warning you about circulating false rumors, didn't you, in July 1954?

A Yes, sir.

MR. BONNEY:

May we have that. I want to reintroduce that as our exhibit also. It can be understood that it is in evidence for respondent?

TRIAL EXAMINER:

Well, the record will show that respondent's 1 has been received and that, I think, is General Counsel's 3, the letter of July 21, 1954.

MR. BONNEY:

Yes, sir.

Q (By Mr. Bonney) Now, you say that, you said this morning that that was the only warning that you ever got from Monkey Grip management, is that right?

A Yes, sir.

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Q Well, as a matter of fact, when Tommy Everett talked to you prior to that didn't he give you a warning also verbally?

A Only just that if I didn't stop those rumors that was going around, if I didn't quit telling those rumors around through the plant, that wasn't true that I would get in serious trouble.

Q Well, wasn't that a warning?

A Well, it wasn't prior to that, the letter, though, the hearing.

TRIAL EXAMINER:

It was not?

THE WITNESS:

So far as I know, I am not for sure, but I am pretty sure it wasn't.

Q (By Mr. Bonney) When was that warning given?

A I am not for sure.

Q Now, it's true, isn't it, that you did some work for Mr. Luke Everett, didn't you, kept some records that he had supervision of?

A I just out the receiving reports and turned them in to him.

Q It's true, isn't it, that from time to time you made some errors in those records, isn't it?

A Well, naturally you'll make some.

Q It's true, isn't it, that Mr. Luke Everett called those errors to your attention and asked you to be more careful, didn't he?

A Well, he didn't ask me to be more careful.

Q He called them to your attention, though, didn't he?

A He called them to my attention, yes, some of the errors that I made.

Q More than one time, didn't he?

A Yes, sir, it's more than one time.

Q And not too long before your discharge, was it, that he called them to your attention?

A I don't know for sure.

Q What kind of records were those? What did they have on them? What kind of information?

A Unless I made a mistake in addition of the material that came in is the only thing I know, something like that which anybody could.

Q What kind of information did you have on the records? Was it a list of materials that came into the plant from the railroad station, purchases of the plant, or what was it? Tell us what it was.

A Well, I don't know exactly specifically what the different items was; there were so many different items that come in there that I can't remember all of them, but I filled them out to the best of my knowledge, which anybody else would do.

TRIAL EXAMINER:

That's not the question, Mr. Whaley. The question is what did the records show, what were they supposed to show, a list of materials received, list of materials that went out? What did the records show?

THE WITNESS:

Well, I just had to turn in an itemized statement of what came in and the goods that came in is what I had to show.

Q (By Mr. Bonney) The number of —

A Where it was from and the amount that was in the shipment.

Q And a description of what kind of materials it was?

A Yes, a description.

Q And those are the records you made mistakes on?

A Well, some few, naturally anybody would do that.

Q You didn't take it too seriously when you made a mistake?

A Well, I tried to correct it, you know, to the best of my knowledge, and watched the next orders that came through to try to get it as near right as possible.

Q You don't attach much importance to your making those mistakes, then?

A Oh, yes, it should be as near as correct as it possibly can be and which I tried to make it as near correct as I possibly could.

Q Did you have to do any multiplication to make out those reports?

A Oh, yes.

Q Did you make mistakes in multiplication?

A In some of it, I guess I did.

Q Did you have to do addition?

A Yes, sir.

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Q Did you make mistakes in addition?

A It's possible.

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THOMAS H. EVERETT,

a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Bonney) . . .

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Q Where do you work?
A At Better Monkey Grip Company.
Q In what capacity?
A President.
Q How long have you been president of Better Monkey Grip Company?
A Since April 1, 1955.
Q Who did you succeed as president?
A L. M. Everett, Sr.

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Q What relation is he of yours?
A He is my father.
Q Do you have any other relatives that are officials in the business?
A Yes.
Q Name them and give their capacities.
A Well, there's John R. Everett, who is vice president in charge of production, there's L. M. Everett, Jr., who is vice president, secretary and treasurer.
Q L. M. Everett, Jr. —

TRIAL EXAMINER:
Let me get the Everetts straightened out. L. M. Everett, Sr. is?

THE WITNESS:
He is now chairman of the board.

TRIAL EXAMINER:
He's your predecessor?

THE WITNESS:
Yes. He was president prior to me.

TRIAL EXAMINER:
And Mr. Luke Everett?

THE WITNESS:
Yes, that's L. M. Everett, Jr. He is vice president, secretary and treasurer, operational manager, purchasing agent.

TRIAL EXAMINER:
And Mr. Jack Everett is a plant manager?

THE WITNESS:
Yes, that's right.

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Q (By Mr. Bonney) Now, Mr. Everett, have you known Bob

Whaley while he worked at the plant?
A Yes.
Q How long have you known him?
A At least from 12 to 15 years.

Q Have you ever had occasion to have called to your attention the quality of his work?

A Yes.

Q Have you ever had a conference with him about things that you might want to correct about his work and about his attitude?

A Well, I would have no reason to confer with him directly about his work. However, I conferred with him about his attitude, as you say.

Q Well, when was that that you conferred with him about his attitude?

A Early, in the early part of 1954, my brother Jack asked me to talk to Bob concerning the things that were going on in the plant. More specifically about tales, rumors, statements that Bob was making which were not true.

Q Did you talk to him about those things?

A Yes, I did.

Q About when was that?

A I would guess that it was somewhere along in, sav, March or April of 1954. I couldn't be too sure except that I do remember that it was prior to the election, that is, the election —

Q What election do you refer to?

A It was held by the NLRB for the bargaining.

Q Election as to whether or not the union would be a representative of the employees?

A Yes, that's right.

Q Now, then, when was it with reference to the first hearing before the NLRB with reference to unfair labor practices?

A I couldn't say for sure, Mr. Bonney. I was not involved in that hearing and I do not recall specifically the date of it.

Q All right. Now, then, what was said at that hearing? Just relate the conversation that took place as nearly as you can.

A At the conference between Mr. Whaley and me?

Q Not the hearing but at the conference with Whaley.

A Well, I asked Jack to — or, rather, Jack asked me to talk to Bob about this, these rumors and tales, and so on, that he was spreading, so Jack sent him to me and I told Bob what I understood had been going on and asked him if he had said the things that were attributed to him, and he agreed that he had.

Q What were those things?

A Well, for one thing, he had talked to various people in the plant concerning at least his belief that the Everetts were responsible for ruining his health. Another thing he said was that he had told them in the plant that he was expecting to be fired at any moment, and he also had, of course, talked of the

conversations been mentioned in previous testimony concerning Jack's supposed to have said that he would fire anyone who had a union card. I asked Bob if he had been spreading those tales. He said yes, he had, and I asked him why. I asked him why he had, why he felt that the Everetts had ruined his health, for example, and he talked about a bale of rubber that fell off of a fork lift and hit him in the back and we had quite a bit of conversation about that.

I asked him if that was something that the Everetts had been responsible for, and I also asked him if it wasn't a fact that his back had been injured before he ever came to work for Monkey Grip. He said it had. I also asked him if a good deal of his physical trouble was not from trouble he had had with his teeth, which he admitted was true, and along with it I asked him if we were responsible for his tooth trouble, which he said of course, we weren't. The conversation was along in those lines.

Q Did you warn him not to repeat any of those false rumors.

A Yes, I did. I told Bob that he wouldn't appreciate our going around and telling untruths about him, consequently he could expect that we wouldn't appreciate such a thing on his part and that certainly he should not tell anything, if he wanted to talk, he certainly should talk the truth, and let it go at that.

Q Now, then, after that —

A May I continue, Mr. Bonney?

Q Go ahead.

A There was another phase of that thing I mentioned where Bob had admitted saying that he had expected to be fired any minute. I asked him why he expected to be fired. He said because of his union activities.

So then I asked him if anyone had told him he would be fired and he said no, and I went on to tell him that we had not and would not fire anyone for that reason.

Q Now, then, after that, did it come to your attention that he spread other rumors?

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A Yes.

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Q State whether or not it came to your attention that prior to the time that he was discharged that Bob Whaley was making errors in the record keeping that was under the supervision of L. M. Everett, Jr., Luke Everett?

MR. THOMPSON:

I object again, Mr. Examiner. It's hearsay here, no showing that the person in question can't testify himself.

TRIAL EXAMINER:

No, I'll permit the answer.

A Yes.

Q (By Mr. Bonney) Now I'll ask you, did you have anything to do with the decision that Mr. Whaley would be discharged?

A Yes, I did.

Q Just tell us what you had to do with it and relate the circumstances.

A Well, it was a matter of consultation between my father and my brother and myself. I had from time to time complained

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of conditions in the plant, particularly in the warehouse area, and when the decision was made to discharge Mr. Whaley, why, it was arrived at through a general summation of a number of factors that really governed the decision.

Q Now, were those factors discussed in a conference?

A Yes.

Q Who was present in that conference?

A My father and brother and myself.

Q Which brother is that?

A Luther, Jr.

Q Was a decision made at that time, at that conference, to discharge Mr. Whaley?

A Yes.

Q When was that?

A It was a short time before he was actually dismissed. I wouldn't say for sure, but probably two or three days. As I recall, we set the thing up to come out even on pay day or something of that sort.

Q What factors were discussed? Just tell what factors were discussed in arriving at a conclusion to discharge him.

A Well, generally that he was, well, generally speaking, an unsatisfactory employee for reason of mistakes made, for reason of attitude, for reason of his disturbance within the plant and in general an attitude that was not suitable for supervisory help.

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Q All right. Can you give any more detail than that of these factors that were discussed?

A Well, I can give you our feelings about his attitude, and so on, which made us consider his services unsatisfactory.

Q I want the feelings at the time you made the decision and not now.

A That's right.

Q All right, just relate what they are in detail.

A All right. First we felt that he was not in sympathy with proper management practice, that is, he was antagonistic toward management to the extent that he couldn't carry out the responsibilities that rested with his capacity in the organization. That fact, plus the already mentioned mistakes and what appeared to us a physical inability to handle the job and apparently — I hesitate to use the expression, mental inability, but still let's say this, that the job he was doing had more or less outgrown his capacity. Does that make it clear?

Q Yes. Now, just tell us in some detail what his job involved and how much merchandise and how much responsibility.

A All right. See, he was in charge of the warehouse, that is, the warehousing inventory of both, primarily of raw materials and some products in process as well as cartons, labels, that sort of thing. Our purchases would run somewhere in the neighborhood of a hundred thousand or better dollars per month or roughly a million two hundred thousand dollars a year, well over

a million at any rate. His duties, of course, were to properly warehouse those materials. In that part of his job, why, he was more or less responsible to the production manager.

He also of course, had to report the receipt of this merchandise, and in accurate details because there was a great deal of money involved, and a difference, for example between a receiving report and an invoice which we would receive from our suppliers meant either dollars out of our pocket or dollars out of the suppliers' pocket, so there was a good deal involved, and in that sense, why, he was responsible to brother Luke who was in charge of purchasing.

The further responsibility within the warehousing itself, was of course, proper handling and storage of the goods because, or, rather, in order to prevent damage to the material, particularly I would say to cartons, containers which eventually would be going out to our customers in forms of finished merchandise.

Q Are there any other factors that were discussed and considered in determining that he would be discharged other than those you have already mentioned?

A There perhaps were some other reasons, Mr. Bonney. Offhand I am not sure that I can recall them. I know we did have quite a discussion over the thing.

Q Well, was he discharged, was one of the reasons why he was discharged, the fact that he had testified in a National Labor Relations Board hearing?

A No, sir.

Q How long was it that his discharge was taken under consideration?

A It was quite a period of time. I would say probably for some weeks.

Q Why was he not discharged earlier?

A Well, we didn't want to fire the man while he was testifying.

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Q (By Mr. Bonney) Why didn't you want to fire him while he was testifying?

* * * *

A It's against the law.

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Q (By Mr. Bonney) In other words, you didn't want to discharge him for that reason, is that right?

A. That's right.

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CROSS EXAMINATION

Q (By Mr. Thompson) At the time the decision was made to discharge Mr. Whaley, Mr. Everett, you were not president of the corporation, is that correct?

A That is correct.

Q Your father was, Mr. L. M. Everett?

A Right.

Q Is it not a fact that the ultimate decision to discharge Mr. Whaley was made by Mr. L. M. Everett?

A The decision was reached through consultation. Mr.

Thompson. I would assume that since he was the executive officer, that the final decision would be charged to him.

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Q Then the answer would be yes, that it was his decision to fire Mr. Whaley, ultimate decision.

A After consultation with the rest of us, yes.

Q Is it not a further fact that his work as such, not speaking of his attitude, but his work as such was not a major concern or consideration in his discharge?

A I would say it was considered.

Q I asked you if it was one of the more important factors in reaching a decision to discharge him, a major consideration in his discharge?

A I would think so.

Q How long had Whaley been warehouse foreman?

A I can't say. I don't know.

Q Approximately how long?

A I'd say for some years.

Q More than two or three years then?

A Well, I don't know.

Q Well, at least two years prior to his discharge, put it that way?

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A I think so, yes.

Q Is it a fact that during that entire period of time he

was handling approximately as much material as he was at the time he was discharged?

A I don't think so. You see, our business has been very fast growing business and at the time of his discharge we were doing a great deal more business than we were even a year ago, or a year or so before.

Q Is it a fact that Whaley was not specifically warned concerning his work as such prior to his discharge?

A He was not warned about his work as such by me.

Q Insofar as you know, was he warned by anyone connected with the company?

A I think so, yes.

Q By whom?

A By my brother Luke.

* * * *

Q When you and your brother and your father were discussing the Whaley situation prior to his discharge, this conference you spoke of, was there any discussion concerning the fact that Whaley had testified at the NLRB hearing whatsoever?

A I believe there was.

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Q Going back now a bit, Mr. Everett, to the time when you were discussing the union situation and the alleged rumors that Whaley had supposedly been spreading, when you talked to him in your office at the request of your brother, did Whaley admit to you during those conversations that the alleged statements he had overheard Jack make to Mr. Talley were false?

A No.

Q Isn't it a fact that said they were true, that that had actually occurred?

A I believe so, yes.

Q Let's try to place this in point of time a little bit more clear. I am not sure that that was done on direct examination. The time you talked to Whaley is what I am talking about now.

A Yes, I know.

Q Isn't it a fact that that occurred prior to the representation hearing before the National Labor Relations Board?

A I don't know.

Q Well, isn't it a fact that it occurred within a month or two from the time that the union began to organize your plant?

A I am not sure of that, either, Mr. Thompson. I don't know what date it was on which I talked to Bob. Neither do I know the date of the representation hearing, so I can't tell you.

Q Let's place it by season then. Was it not in the spring of 1954?

A I believe so.

Q March, April or May?

A I believe it was. In fact, I testified to that.

Q In the spring of 1954, then?

A I believe so.

Q And you never personally again talked to Whaley concerning any alleged rumors after that, did you, Mr. Everett?

A I don't believe so.

Q Insofar as you know, did anyone talk to him concerning that subject of that date, I mean official of the company?

A I wouldn't say. I don't recall it.

Q Other than the letter which has been introduced in evidence, was any warning of any type given to Whaley concerning alleged circulation of rumors, insofar as you know?

A After my talking to him?

Q After your talking to him?

A As far as I know, no.

Q Specifically was there any warning given to him within a month or two months prior to his discharge in February of 1955?

A Not by me.

Q Or by anyone else, insofar as you know?

A I don't know.

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Q (By Mr. Thompson) At the time that your father made the ultimate decision to discharge Mr. Whaley, was he particularly active in the business.

A Yes, I believe so. He has been active off and on for the past several years, as everybody knows. Sometimes he is in the hospital and sometimes he isn't. It is a reoccurring heart condition which more or less governs his activities.

Q Were you aware that your father gave a statement concerning this matter to the National Labor Relations Board, an affidavit?

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A I believe I remember something about it, yes, sir.

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Q (By Mr. Thompson) I'll hand you this to see if you can verify your father's signature.

A Yes. I have seen this. I can already tell you I remember the wording.

Q I'd like to direct your attention to a particular portion of it beginning with the last paragraph on the first typewritten

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page concerning the statement, "Whaley's work was not the major consideration in my decision to —"

MR. BONNEY:

I object to that because he is taking a statement, an ex parte statement, and asking this witness about it and thereby getting into the record something that Mr. Everett, Sr., was supposed to have signed that is not admissible in evidence.

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Q Is it not a fact that Mr. Whaley's immediate supervisor was Mr. Jack Everett rather than yourself or your father in the production department?

A His immediate supervisors were Jack Everett and Luke Everett. He had a dual role there to play because he had to answer to purchases in one sense and to the factory manager in another, that is, in the way he handled it in the warehouse or the way he stocked it, stores it.

Q Is it not true that the bulk of his work was supervised by Mr. Jack Everett, though, the majority of his work?

A I would say, oh, maybe 60 per cent, yes. I don't know how much of his work or time was spent in making out receiving reports, accounting and inventory, and so on.

Q Did you personally or did you ever authorize anyone to make any investigation of these alleged rumors that Whaley was supposed to have been circulating?

A Other than to ask Jack more about it when he was telling me about it, I would say no. You did ask if I personally instigated it?

Q Yes, or knew of anybody being instigated to make an

investigation if not yours, or that's really three questions. First, did you yourself do it?

A No, I did not.

Q Did you have one instigated, an investigation yourself?

A No.

Q Do you know of anyone being instigated by anyone else in a managerial capacity there at the company?

A Well, I think there was some follow-up to them, yes. In fact, I am certain there was.

Q Do you know what that follow-up was?

A Point of investigation by Jack on others under him.

Q Do you know what the investigation was comprised of?

A No, I don't.

Q What was done?

A No, except that they checked around the plant, I am sure, because, well, you had witnesses on that subject before.

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REDIRECT EXAMINATION

Q (By Mr. Bonney) Mr. Everett, you said that you and your brother Luke and your father had a conference regarding the discharge of Mr. Whaley. Now, at that conference, just state whether or not it was then decided to discharge him or whether it was made after that conference.

A To the best of my knowledge, it was decided then. I said that this thing was reached through consultation amongst us. I have also said that it was my father's decision. It is my feeling that that decision was made then. In fact, I left the consultation with the idea that he would be amongst the missing following the next pay day.

Q State whether or not either you or Luke Everett helped make the decision.

A I would say that we did, yes.

Q Which one of you?

A I would say both of us did.

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LUTHER M. EVERETT, JR.

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Bonney) . . .

* * * *

Q Where do you work?
A Better Monkey Grip Company.
Q In what capacity?
A Vice president, secretary-treasurer.
Q Do you know Bob Whaley?
A Yes.
Q How long have you known him?
A I believe 17 years.
Q Do you have anything to do with his work, do you have any supervision over it?
A Yes, I did.
Q You did when he was employed there?
A Yes.
Q What did he do that was under your supervision?
A He received the materials that I purchased and turned in records confirming receipt of the amounts that were supposed to have been shipped to us.
Q Was that the only kind of records that he kept for you?
A Yes, I believe so. That's basically the only records.

Q State whether or not he kept those records satisfactorily?

A Oh, I beg your pardon, Mr. Bonney. We did have — we had at that time, I believe, I know we have now, a system of accounting materials on hand, a card system, and certain types of material Bob was responsible for turning in stock on hand reports.

Q Was that a perpetual inventory, more or less?

A No, it was a periodic check on materials on hand with the use of which I determined our consumption during the previous period.

Q Now, then, state whether or not these records that he kept under your supervision were kept satisfactorily just prior to the time he was discharged.

A No, they were not.

Q Well, just state in some detail what kind of errors were in them, if any, what was wrong with them, why they were not satisfactory?

A The errors that I remember best involved errors that differed from the reporting materials that the quantities primarily of goods different from that with which were invoiced and checking into it, why, it would turn out to be either an error in multiplication or an error in addition or an error in quantity contained in any one unit; for instance, reporting 200 bags of material, two hundred —

MR. THOMPSON:

Mr. Examiner, I object to this line of

testimony. I believe if this kind of testimony is going to be permitted that the records they speak of are the best evidence and should be introduced.

TRIAL EXAMINER:

The thought was in my mind, Mr. Bonney, that if you were perhaps getting to the type of record, that is, I take it that these are written records, Mr. Luther Everett referred to cards, and so on, it might be well if we knew better the type of record that was kept. I take it as far as we have gone, from what Mr. Luther Everett has said, that there were two different kinds of records here, records of receipts of purchases made by Mr. Whaley and also a card record kept of the materials on hand, which was not a formal inventory, just a check record of the materials that are supposed to be there, which I assume Mr. Everett used in his purchasing. The complexity of records, I suppose the nature of the record keeping required would have something to do, would assume, justification for this being a reason for discharge. I'll overrule the objection, but I tell you what was in my mind.

MR. BONNEY:

Well, we could, if we had to get into the records themselves they would just prolong this hearing. We can do it.

TRIAL EXAMINER:

No, I would assume that through the witness you could explain the nature more precisely in the record keeping.

MR. BONNEY:

What was the question? Part of the answer was

given and it was interrupted.

(Record read.)

Q (By Mr. Bonney) Just finish the answer.

A Reporting bags as being 50 pound bags instead of 100 pound bags or possibly 25 pound bags instead of 50 pound bags, which multiplying the number of bags received times the erroneous quantity would give an erroneous total material received. On the cards that I mentioned, the errors there would either in counting the material incorrectly or in writing the wrong figure down after having counted it, which, if I may add, is very important in determining the quantities of material that we are consuming and the quantities of material we should carry in inventory and how often and how often we should purchase the materials.

MR. THOMPSON:

Mr. Examiner, I object to this entire line of testimony and move that it be stricken from the record, and state that General Counsel is taken by surprise on this particular line of testimony; further, if the respondent is now relying upon errors made by Mr. Whaley for the reason for his discharge, that these errors be clearly and adequately spread upon the record by way of records or in any other manner that the respondent may wish to do it.

TRIAL EXAMINER:

In other words, you are saying this, this isn't the best evidence, that they ought to have the records here that can cite the mistakes made?

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MR. THOMPSON:

They are claiming now that mistakes were one of the reasons for his discharge, but offering no proof of mistakes other than the testimony and referring to records which substantiate their claim.

MR. BONNEY:

I think that goes to the weight of the testimony.

TRIAL EXAMINER:

I don't think, Mr. Thompson, I'd be justified in striking the testimony. I think Mr. Bonney took the words out of my mouth. I think it goes more to the weight to be given to such evidence and to its materiality or relevancy or as to what is the proper proof. I will deny the motion to strike.

* * * *

Q (By Mr. Bonney) Give in some detail what information is on the record of incoming materials that Mr. Whaley made, just give it column by column what goes into it.

A Mr. Whaley customarily showed whether the freight was prepaid or collect, which is very important. He showed the number of units received, the quantity of material in each of those

units and attention of that quantity multiplication showing the total quantity received.

He also had to show the full description of the material as we knew it, not necessarily the full description that was shown on the invoice, but common terminology there in our plant.

Q Any other information?

A The name of the shipper from whom the material was received, the truck line that delivered the material, and I believe the gross weight of the entire shipment, including tare.

Q State whether or not these records were kept individually for each invoice or would more than one invoice merchandise go on one sheet or just the representation of one invoice?

A In most cases there was an individual receiving report for each invoice. One or two of our suppliers would have several invoices covering one shipment, thinking specifically of R. C. Can Company in Arlington, wherein our truck picked up the empty cans and brought them over to our plant and the can company sometimes made up the shipments ahead of time and had them written up on individual tickets, which resulted in two or possibly more invoices.

Q Now, state whether or not you ever called these mistakes to Mr. Whaley's attention.

A Yes, I did.

Q Did you do it more than once?

A Yes, on numerous occasions.

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Q Did you do it very long before his discharge or very a very short time before; with reference to the time he was discharged, about when did you give it to him?

A Well, there were times that I called the errors, such errors to his attention during his entire duty as warehouse man and receiving foreman, but the more recent months, I would say the last two or three months, it was very definitely an increase in the number of errors to the extent of being a nuisance.

Q Well, I'll ask you now whether you called those more recent ones to his attention?

A Yes, I am sure I did. I don't know that I could name specific times or incidents, but I do know that I from time to time called his attention to them.

Q I will ask you whether or not you had anything to do with making the decision to discharge Mr. Whaley.

A Yes, in the form of a consultation and recommendation on my part.

Q Who did you have that consultation and who did you make that recommendation to?

A With my father, L. M. Everett, Sr., and my brother Tommy.

Q Now, then, was Jack Everett your brother?

A Yes.

Q Was he in the consultation, too?

A Not the last consultation, as I recall.

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Q Why was he not?

A I believe he was out of town.

Q Did you make any recommendation to your father about discharging Mr. Whaley?

A Yes, I —

Q What was the recommendation?

A — called to dad's attention the numerous errors that had been made and that in my mind he was unable to give us the type work that we should expect from foremen and needed in order to make good judgments or decisions in regard to purchasing materials.

Q You said you were in conference with your father and Tommy Everett about discharging him. Could you relate what things were considered in the discharging of him at that time, at the conference, that last conference?

A Yes. In addition to the errors which were my basic recommendation, that's where I entered into the question mostly, I suppose from a departmental standpoint, we discussed the things that we felt we were entitled to from a foreman, we discussed his physical inabilities and his general attitude. We discussed the need for harmonious relations among our employees as a group, everyone working together, and the fact that Bob was apparently unable to command the respect of his fellow employees, and in fact irritated the other employees in one way or another such as the false rumors and so forth.

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Q Did you discuss or consider any particular false rumor that had been called to your attention?

MR. THOMPSON:

I object, Mr. Examiner. We are getting back to the hearsay again.

TRIAL EXAMINER:

I will sustain the objection.

MR. BONNEY:

I can prove whether or not later. I want to know now whether they considered it and then I will go into whether he knew it or not. Anything that is reported to them by employees is something they can take into consideration. They don't have to see everything. You can discharge an employee without seeing everything that he does, if we can prove that it happened and that it's called to their attention, so we would like to conduct this testimony to prove those things. First I want to know whether he did consider it. If not, there is no use in going further with it.

TRIAL EXAMINER:

Well, if I understand the question correctly, perhaps I wasn't listening too closely, it was whether or not any reports had come —

MR. BONNEY:

No, sir, I asked him if they considered any reports of false rumors, that whether it made —

TRIAL EXAMINER:

At the time they were discussing this matter of possible discharge. Well, I'll permit the answer.

A Yes, we did.

Q (By Mr. Bonney) Now, which particular one did you consider?

A The one I believe about our having ruined his health, and

I knew about the story he was spreading that the union was —

MR. THOMPSON:

I object to that portion of the answer. It's not responsive to the question. It's volunteering information by the witness.

MR. BONNEY:

I think it is responsive. I asked him which ones he considered.

MR. THOMPSON:

The witness testified that he knew, Mr. Bonney, not that they discussed it.

TRIAL EXAMINER:

Go ahead. I think that we can shake it out. I think technically you are right, Mr. Thompson, but actually the witness is answering in his own words. He started to say he himself knew about the rumors. Go ahead, Mr. Everett.

A I knew about the story he was telling to the effect that the union or that the — if the union had done nothing else, they had at least gotten us a pay raise which was coming through the next week. Now, whether or not it was discussed as at that very last consultation or whether I learned of it a day before that or a few hours before that, I couldn't say. I am sure that we did discuss it at that, I am ninety percent sure that we did discuss it at that last conference.

Q (By Mr. Bonney) Well, did you or did you not con-

sider that in arriving at your decision to recommend his discharge?

A My own recommendation as relating to my direct work with Bob was on the errors. My recommendation as one of the partners of the firm, one of the officers of the firm, did take that into

consideration on the belief that unsympathetic attitudes to the extent of telling falsehoods certainly indicated that we couldn't count on Bob for the duties naturally expected of a foreman.

* * * *

CROSS EXAMINATION

Q (By Mr. Thompson) I think you have testified, Mr. Everett, that you called some of these errors to Mr. Whaley's attention?

A Yes.

Q Did you ever tell him that if he didn't straighten out he would lose his job?

A I don't believe I ever threatened him with that, that possibility, not by direct words.

Q What sort of things did you tell him when you pointed out these supposed errors to him?

A My pointing out these errors to Bob in itself was —

Q Just what did you say to him?

A — correction or warning.

Q What did you say? What did you tell him when you pointed out these errors to him?

A In the most part I was asking him for clarification of the errors to determine whether they did or did not receive such and such material, in other words, to straighten out my records, my payables records.

Q Just questioned him about these mistakes?

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A I think whether or not I ever pointed my finger at Bob and said "Now you are going to get fired if you don't straighten up," I don't believe I ever did that. I don't think it was necessary. I don't think it would have been in order. I don't think it would have accomplished the results that an employer wants to accomplish when he talks with an employee. My main concern in calling those errors was to straighten up my records and also to point out to Bob that I expected him to be more accurate and I needed him to be more accurate.

* * * *

Q (By Mr. Thompson) During the conference or in the conference when the decision was made, what was the main reason for

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deciding to discharge Whaley, or was there a main reason, I'll ask you first, a single reason, a single main reason?

A My own reaction or the —

Q You were there, you know what was said. I was merely asking you was there a main reason, a main reason, a one thing.

A. I don't believe I can testify to the intermost feelings of Tom and dad.

TRIAL EXAMINER:

That's not the question, Mr. Everett. The question is at that meeting was there an essential reason decided upon for the discharge of Mr. Whaley, unsatisfactory work or physical disability or attitude, was there a single essential reason decided there to go to the discharge of Mr. Whaley? Figuring it another way, what does the employment record show the reason for his discharge?

THE WITNESS:

The reason for discharging Bob was generally unsatisfactory circumstances, meaning his attitude, a combination of his attitude, his errors in his work, which I personally felt was due to poor attitude, and to the general conclusion that Bob had not been satisfactory in any way as an employee and that we had no reason to suspect that he could improve after so long a time. I think most of the testimony put together, I mean my testimony about attitude and in harmonious relations with our other employees add together to have dictated that we fire Bob.

Q (By Mr. Thompson) Then it wasn't the errors alone or the

alleged physical inability alone or any other one thing alone, is that correct?

A Not to my knowledge, not as I recall.

* * * *

MR. BONNEY:

Now, respondent would like at this point to renew its motion to dismiss that the court reserved until it heard additional evidence.

TRIAL EXAMINER:

I'll reserve decision on your motion to dismiss, Mr. Bonney, and dispose of it in my Intermediate Report.

* * * *

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MR. BONNEY:

I would like to make a brief statement and file a brief. The reason I would like to make a brief statement is that I might get tied up and can't file a brief, but I think that I can, but just in case I would at least have something in the record.

* * * *

MR. BONNEY:

I would like to make this argument both on the motion and as to the evidence, because I think some of it will be the same. It's respondent's contention that first General Counsel has not made a prima facie case under the pleadings in that he has not proved under 8 (a) (1) that a single member of the union or a single employee has been prejudiced as to any of its rights as contemplated in Section 8 (a) (1) and Section 7; in other words, there has been no proof and there is no pleadings, for that matter, to the effect

that there is any union activity of any kind in the plant and that

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a single soul in the plant or elsewhere even knew about this discharge of Mr. Whaley or even considered it at all in considering their rights under the Act, and particularly under Section 7 and 8 (a) (1). The General Counsel has the burden of proof, and we think he has not met that burden.

The same thing we would say with reference to violation alleged under Section 8 (a) (4), we still contend that an employee as used in Section 8 (2) (4) means an employee as defined in the Act and not a supervisor, and that it is not a violation of the Act to discharge a supervisor for testifying in a case under the Act. However, we think that the proof does not show even a prima facie case that he was discharged for testifying. He was not discharged for more than seven or eight months after he first testified. He was not discharged for about a month after he last testified. It is undisputed in the record that Mr. Whaley was discharged for specific causes, a number of them which all amounted to unsatisfactory service. The letter that was sent to him used that term. The testimony of the two vice presidents was to the effect that there was a meeting of the president and two vice presidents on the subject of discharging Mr. Whaley, and that a number of things that have been going on a long time added up to him not being able to handle the job any more. These things, or in particular the fact that he made numerous errors that had increased just be-

fore his discharge, on the records that he kept, secondly he had a

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bad general attitude and didn't get along with the employees, and they didn't like him and they didn't make for congeniality in the plant. He was a spreader of rumors, false rumors.

Now, one of those rumors was proved by Miss Cribbs and another lady, whose name I can't remember, followed her and testified that Miss Cribbs told her about hearing Mr. Whaley spread this rumor within a few days after it was done. That testimony is not disputed. Mr. Whaley didn't dispute it. I believe it. Especially do I believe it because another witness she told it to her within a few days afterward and she didn't even know then that it was material to this hearing or any other hearing.

Should a supervisor have the right to spread rumors that would hurt the company? They are representing management and they spread rumors because of their prejudice on behalf of the union. They want to see a union come in there, and so they spread rumors around that a union has gotten pay raises. I think that within itself is enough to discharge a man and that was considered when he was discharged later, and so you would expect a supervisor to be the opposite from what Mr. Whaley was to be cooperative with management and keep down rumors rather than being the source of them.

He was given a letter, which is in evidence, warning him about rumors; right after the first hearing he was said to have circulated rumors that he had won the fight for the union and

he was of some concern in the matter and he was warned against that. He was warned against making so many errors in these records.

Now, that is all the evidence of the respondent, but what is the evidence of the General Counsel? There's not any evidence except that he testified, and that his testimony was adverse. That's all. Now, how long does management have to keep a man employed that testifies in a hearing if he is adverse to them? Does that perpetuate him in his job or can management say "Well, I can fire this man because he is not satisfactory generally" and give a number of reasons in his own mind why he should be discharged. I think he was discharged for cause, several causes that all amounted to being unsatisfactory. These were tolerant people. The evidence shows that. They could have wacked him off the first time he crossed his foot over the line, but they didn't do it. They kept him on. They let him testify in these hearings. They knew that he was hurting them, but that's all right. They let him testify. They didn't fire him for cause then. They went on and let it accumulate and fired him, because they did it for cause. Otherwise they would have fired him the first time he testified, the sun wouldn't have gone down unless he was discharged.

It's our view that if this company can't fire Bob Whaley for the reason they did, then that you just can't fire any man that's ever testified against you in a hearing, so we say that

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General Counsel has not met his burden and that any smattering of a burden that he has reached has been far overcome, we think by the real reasons that are set out in the testimony for a discharge, so we ask that first that the motion be sustained and the case be dismissed, and if that is not done that it be held that this man was discharged for cause. That's all of the argument.

• • • •

A Yes, sir.

Q Did you have to tell them you were ready to go to work?

A Yes, sir.

Q Did you have to tell them you were willing to go to work?

A Yes, sir.

Q Did you have to tell them you were able to go to work?

A I was for light work; I asked for light work. I couldn't do heavy work.

Q Did you get full benefits for unemployment during that five weeks?

A Yes, sir.

Q Have you ever applied for unemployment benefits at any other time?

A Well, it has been a long time.

Q How long ago?

A First, twenty-second, 1940, I believe.

Q 1940?

A I think that is what it reads.

Q Whereabouts do you live, Mr. Whaley?

A At Arlington.

Q Where, in Arlington?

A 815 Scott Drive.

Q How long have you been living there?

I got hit, you know, it popped my head backward and forward and made me stiff-necked.

Q Did you claim you were permanently disabled?

A No, sir.

Q What?

A No, sir.

Q Well, what did you claim?

A Well, just that I wasn't able to do the work that I used to do because it was too painful for me and I couldn't rest at night.

Q Did you get any money on account of that suit?

A Yes.

Q How much?

A Well, to my part I got Sixteen Hundred.

Q Did you work while that suit was pending?

A Yes, sir.

Q You worked right along?

A Yes, sir.

Q Regular work?

A Yes, sir.

Q And your part was Sixteen Hundred, is that right?

A That is what I netted, yes, sir.

Q Well, didn't you claim you were permanently disabled in that lawsuit?

A Not that I remember of.

Q I notice when you walk, you sort of walk stooped over?

A Yes, sir.

Q How long have you been walking like that?

A Well, since this last injury I can't straighten up on account of the injury across my kidneys, that I had this last time.

Q Well, you walked stooped over after that other accident, didn't you?

A Very little; it was mostly because of my neck.

Q Well, you walked stooped over and said you couldn't walk standing up, didn't you, in that other lawsuit?

A Well, no, not like I do now.

Q Well, what is the difference?

A Well, there is quite a bit of difference. I just can't — just bent over more than I ever was. In fact, I can't lay on my stomach at all now, after this last injury.

Q And it is your testimony that the only thing you were complaining of at that time is your neck?

A Yes, sir.

Q Is that right?

A So far as I know, it is.

Q Well, you know where you were hurt, don't you?

A Well, it was right at the base of my neck, is where it was.

Q Is that the only place where you had pain?

A Yes, the x-ray man.

Q How did you happen to go to those doctors?

A I was sent there by Mr. Harless.

Q Are you satisfied with the treatment they gave you?

A Yes, sir.

Q You thought they were pretty good doctors?

A I think so.

Q Well, have you had any other injuries of any kind?

A Only those other two back injuries that I got out at the plant. They had — there was a report on that where I went up to Altick up there.

Q When was that?

A I believe one of them was about five years ago and the other about seven.

Q Did you lose any work?

A No, sir.

Q Your back has just been bothering you for years, hasn't it?

A Only when I got hurt out yonder — the only time it has bothered me to amount to anything.

Q Well, when were these other two back injuries?

A They were out at the Monkey Grip.

Q When?

A Along about five years ago and the other about seven, just about, approximately — I don't know for sure.

don't know which, but they didn't give me any reason.

Q When did they fire you?

A Because I was getting crippled and wasn't able to do as much as they wanted me to, to start with.

Q When did they fire you?

A I don't remember the date exactly.

Q Well, was it just before you went over there for these employment benefits?

A Yes, sir.

Q You worked about a week after you claim you got hurt?

A No, a little bit longer than that, two or three weeks — two weeks, I think.

Q How did you get hurt?

A I was straightening up some skids with a fork truck and there was — has a metal bottom in it and when that gets damp or wet or something, it gets real slick; with all that powder and rubber and stuff and grease, all gets in the bottom of that and it gets real slick. And if you are not careful you will slip in it and just as I started to step out of it I tripped and my foot caught the foot pedal and it throwed me down head first and I fell out of the fork truck off of the edge of the dock down into a scrap metal bin head first, down into it. I landed on my right shoulder and flopped over against the sides — it has got ribs up and down it, you know, and it caught me right in the center of my

back and my shoulder and right across my kidneys there. It feels like, after two or three days after that, it feels like it had jarred them loose or something, jarred my kidneys loose in there or something. I can't lay on it very long at a time, have to change positions.

Q Didn't you usually use a fork truck out there in your work?

A Well, I had used it for three or four years and then they got a man to drive it altogether. Well, they decided to move him to another job and they were going to put another boy on it; they moved him on to another job Wednesday and they were going to put another boy on it on Monday; so I had to have some work done with it, so I used it myself then.

Q All you were doing was stacking these skids?

A Stacking skids, yes, sir.

Q Did somebody tell you to do that?

A No, sir, I was my own boss out there. I do everything that I see that needs to be done, I do it.

Q What was your job out there?

A Receiving clerk.

Q You say you fell into a bin?

A Yes.

Q And it was next to a loading dock?

A Yes.

Q And you fell down into the bin from the fork lift?

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GENERAL COUNSEL'S EXHIBIT No. 2

To You from

BETTER MONKEY GRIP COMPANY
Manufacturers

Tire and Tube Repair Materials
"MONKEY GRIP" and "BETTER" Brands
Molded Rubber Products

P. O. Box 6170
5320 Harry Hines Boulevard
Dallas 2, Texas

Owned and Operated By
L. M. EVERETT,
President
L. M. EVERETT, JR.,
V. Pres., Sec'y-Treas.
J. R. EVERETT,
V. Pres.—Production
T. H. EVERETT,
V. Pres.—Sales

February 18, 1955

Mr. R. L. Whaley
Better Monkey Grip Company
Dallas, Texas

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Dear Bob:

As your employment in our organization is presently unsatisfactory to management, it is hereby terminated as of today.

In lieu of advance notice we are enclosing, in addition to your time through today, two weeks' additional pay. Since you have worked approximately six months since your last paid vacation, we are also enclosing one weeks' unused vacation pay, in line with our vacation policy.

Yours very truly,

BETTER MONKEY GRIP COMPANY
By L. M. EVERETT
President.

L. M. Everett/b
Enclosures

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GENERAL COUNSEL'S EXHIBIT No. 3

To You from

BETTER MONKEY GRIP COMPANY
Manufacturers

Tire and Tube Repair Materials
"MONKEY GRIP" and "BETTER" Brands
Molded Rubber Products

P. O. Box 6170
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Owned and Operated By
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V. Pres., Sec'y-Treas.
J. R. EVERETT,
V. Pres.—Production
T. H. EVERETT,
V. Pres.—Sales

July 21, 1954

Mr. Robert L. Whaley
Arlington, Texas

Dear Bob:

It has come to my attention from different sources that you are making statements to employees regarding the NLRB

hearing to the effect that you have licked the company, and in a few days some of the people involved will be back to work and all back wages paid.

These statements are wholly untrue, as it will be weeks before the outcome of this particular hearing is known by anyone.

We feel that these malicious statements are harmful to the company and employees to the extent that we must insist they be stopped.

Any repetition of such actions will force us to request your resignation.

Sincerely,

BETTER MONKEY GRIP COMPANY
By JACK EVERETT
Plant Manager

J. R. Everett:mjd

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RESPONDENT'S EXHIBIT No. 1

THE STATE OF TEXAS
to
TRADERS AND GENERAL INSURANCE COMPANY,
A CORPORATION, DEFENDANT

You the said defendant are hereby commanded to appear by filing a written answer to the plaintiff's petition at or before 10 o'clock A.M. of the Monday next after the expiration of 20 days after the date of service hereof before the 14th Judicial District Court of Texas at the Courthouse in the City of Dallas, Dallas County, Texas, said plaintiff being Robert L. Whaley.

Filed in said Court on the 2nd day of June, 1955, against Traders and General Insurance Company for suit, said suit being Numbered 104144-A, the nature of which demand is as follows: Compensation, etc. as shown by said petition, a copy of which accompanies this Citation.

If this Citation is not served within 90 days after date of its issuance, it shall be returned unserved.

WITNESS, BILL SHAW, Clerk of the District Courts of Dallas County, Texas.

Given under my hand and the Seal of said Court at office in the City of Dallas, this the 2nd day of June, 1955.

ATTEST: BILL SHAW
Clerk of District Court of Dallas County, Texas.
By JOHN H. NORMAN, Deputy.
John H. Norman

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PLAINTIFF'S ORIGINAL PETITION

In The District Court
Dallas County, Texas
— Judicial District

(Filed: June 2, 1955)

No. _____

Robert L. Whaley
vs.
Traders and General Insurance Company

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Robert L. Whaley, hereinafter styled plaintiff, complaining of Traders and General Insurance Com-

pany, hereinafter styled Defendant, and for cause of action would show the court as follows, to wit:

I.

That plaintiff is a resident of Arlington, Tarrant County, Texas; that the defendant is a corporation duly incorporated under the laws and doing business in the State of Texas with its principal office being located at Post Office Box 6291, Dallas, Dallas County, Texas, where service may be had upon its agent.

II.

Plaintiff would show the court that on or about the 10th day of February, 1955, while in the employ of Better Monkey Grip Company, of 5320 Harry Hines Boulevard, in the City of Dallas, Dallas County, Texas, in the capacity of a warehouseman, at an average wage of $58.84 per week, he was engaged in the operation of a fork-lift truck in loading and unloading supplies from the dock of said company; that while operating said machine, plaintiff slipped and fell forward into a metal scrap bin located on said dock and landed on his head and hands, with his back and legs hitting the side of said bin; that said accident occurred at or about 10:30 o'clock A.M. on said date and that this fall into the said scrap bin caused him to suffer immediate excruciating pain in the middle and upper back region; that such injury was immediately known to his superior officers in the said company.

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III.

Plaintiff would show the court that the cartilaginous materials, bone, muscles and tendons in the middle and upper back region have been severely strained, bruised, torn and lacerated as a result of the fall into the said bin, as aforesaid; that immediately after said fall and for some seven or eight working days thereafter, plaintiff continued to suffer pain in said back area, but in spite of said difficulty, attempted to carry on in his employment, but that thereafter, on or about the 21st day of February, 1955, plaintiff had been unable to perform the normal task of a workman in his employment, and has been unable to do any manual work or labor whatsoever.

IV.

Plaintiff would show the court that at the time of the accident, the Better Monkey Grip Company, was a carrier of Workmen's Compensation Insurance with the defendant, Traders and General Insurance Company, which said policy of insurance, among other things, provided that plaintiff be entitled to receive the sum of $25.00 per week for a period of time not to exceed 401 weeks in case plaintiff sustained total and permanent disability or total incapacity for the performance of work; that said insurance was for plaintiff's benefit as well as for the benefit of plaintiff's employer, and that the policy of insurance in force and effect at the time plaintiff sustained the injury herein de-

scribed, was and still is in the possession of said insurance company, and notice is hereby given to the defendant insurance company to produce said policy in court at the time that this cause is tried, or secondary evidence will be offered by plaintiff to prove and establish the contents thereof.

V.

Plaintiff states that notice of injury was filed with the Industrial Accident Board on or about the 28th day of February, 1955, and that claim for compensation was filed with the Industrial Accident Board on or about the 28th day of February, 1955, and that the

Industrial Accident Board of the State of Texas entered its final award and decision on the 13th day of May, 1955, a photostatic copy of which is attached hereto for jurisdictional purposes only.

VI.

Plaintiff would show the court that thereafter on or about the 21st day of May, 1955, plaintiff, by and through his attorney, gave notice in writing that he was unwilling and would not abide by the award made and entered by the Industrial Accident Board, on the date aforesaid, and would within twenty days after the giving of such notice, file suit in a court of competent jurisdiction to have the claim of plaintiff tried and adjudicated before a court of competent

jurisdiction as provided by the laws and statutes of the State of Texas, and that this petition is filed in due and seasonable time, in pursuance of said notice of plaintiff to file same.

VII.

Plaintiff states that as a result of the injury aforementioned, his upper and middle back area and the surrounding area were so damaged and injured that he is now unable to walk upright, and that he is unable to lift any heavy object without suffering pain, or to stand on his feet for any appreciable length of time; that he is unable to stoop, bend, or turn in any way without suffering severe pain in his back area; that the muscles, muscular attachments and cartilaginous materials surrounding the upper and middle back area have been injured in such a manner as to limit the bending and flexation of his back; that as a result plaintiff has lost the use of his back, and as a matter of fact, the ability to do any work whatsoever; that he is now suffering traumatic arthritis in his back, and that all of this was the direct and proximate cause of the accident, as aforesaid.

Plaintiff would show the court that since the date of the accident herein complained of, and in consideration of said accident, he is and has been unable to obtain or retain a job performing

work and labor for which he was trained and able to perform prior to said injury.

VIII.

Plaintiff alleges that if he be mistaken in that the aforesaid accident caused the arthritis to develop in his back, then he alleges that such accident to his back aggravated a pre-existing arthritis condition in his back; that his present disability was not solely caused by any such pre-existing arthritic condition, if any, but if there was a pre-existing arthritic condition of the plaintiff's back, it was severely aggravated by the fall and accident, and plaintiff says that as a result of such aggravation he has not been able to do the work that he had been trained and to work that he had been doing for over fifteen years, and has been unable to perform any type or character of work requiring manual labor, or the usual tasks of a workman, and will be unable to do or perform any kind or character of manual work to which he has been accustomed for the rest of his natural life.

IX.

Plaintiff would show the court that since the date of the accident herein complained of, and in consideration of said accident, he is, and has been unable to obtain or retain a job performing work and labor for which he was trained and able to perform prior to said injury.

X.

Plaintiff states that prior to said injury, he was an able-bodied and healthy man, and had no physical impairment or disability; that as a result of the injury, as aforesaid, he alleges that he has become permanently and totally disabled, to his damage in the sum of $25.00 per week for a period of 401 weeks.

IX.

Plaintiff states that if he should be mistaken in that he is not totally and permanently disabled, then he alleges that he is disabled to the extent of at least 75 per cent, and he is entitled

to his compensation on the basis of 75 per cent disability, or whatever amount the jury might determine.

XII.

Plaintiff would further show the court that at the time of the accident herein described, he had been employed by the Better Monkey Grip Company for a period of approximately seventeen years.

XIII.

Plaintiff would show the court that he is a man of some business ability and training, and if paid his compensation in a lump sum, he can invest it and aid in making a living for himself and his family, and thereby save the principal due and owing; that if his compensation is paid to him in weekly installments the same will be used by plaintiff and his family for the bare essentials of life and will be spent as the same comes in, and there will not be enough to invest in a business; that unless his compensation is awarded to him in a lump sum, a manifest hardship and injustice will result to plaintiff; and plaintiff respectfully requests that whatever amount of compensation be awarded, that it be paid in a lump sum.

WHEREFORE, premises considered, plaintiff prays that the defendant, the Traders and General Insurance Company, be cited to appear and answer herein; that upon final hearing hereof, plaintiff be awarded judgment for the amount of $25.00 per week for a period of 401 weeks, less the discount allowed by law; that such amount be ordered paid to plaintiff in a lump sum; that if plaintiff fails to establish that he is entitled to the full amount of $25.00 per week for a period of 401 weeks, then plaintiff prays that he be awarded such amount as the evidence and testimony in this case will show, and that he be awarded such percentage of total disability as may be fixed and determined by the jury, and that this amount be ordered paid in a lump sum; and for such other and further relief, special and

general, in law or in equity, to which he may show himself justly entitled.

GREEN, BYRON & WRIGHT
and CHANEY & HARLESS
By FRED S. HARLESS
Fred S. Harless
1814 Life of America Bldg.
Dallas, Texas
Attorneys for Plaintiff

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CLERK'S CERTIFICATE

THE STATE OF TEXAS)
COUNTY OF DALLAS)

I, BILL SHAW, Clerk of the District Court in and for the County of Dallas, do hereby certify that the above and foregoing is a true and correct copy of CITATION AND PLAINTIFF'S ORIGINAL PETITION as same appears on file in my office, in cause No. 104144-A, entitled ROBERT L. WHALEY VS. TRADERS AND GENERAL INSURANCE COMPANY, A CORPORATION, filed on the 2nd day of June, 1955.

WITNESS my official seal and signature at office in the City of Dallas, this 7th day of November, 1955.

BILL SHAW
Clerk of the District Courts.
Dallas County, Texas
By /s/ Fred Fletchner Deputy
Fred Fletchner

(SEAL)

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JUDGE'S CERTIFICATE

THE STATE OF TEXAS)
COUNTY OF DALLAS)

I, SARAH T. HUGHES, Judge of the District Court of the ____ Judicial District of Texas, in Dallas County, do hereby certify, that Bill Shaw, whose genuine signature appears signed to the Certificate below, is the duly elected, qualified and acting Clerk of said Court, and was at the time of so signing same, and that said Certificate is in due form of law.

IN TESTIMONY of all of which I hereunto sign my name and affix my official seal at office in the City of Dallas, Dallas County, Texas, on this the 7th day of November, A. D. 1955.

/s/ Sarah T. Hughes
Judge of the 14th District Court,
Dallas County, Texas

(SEAL)

CLERK'S CERTIFICATE

THE STATE OF TEXAS)
COUNTY OF DALLAS)

I, BILL SHAW, Clerk of the District Courts, within and for the County of Dallas, and State of Texas, do hereby certify that Judge Sarah T. Hughes, whose genuine signature appears signed to the above and foregoing Certificate is the duly elected, qualified and acting Judge of said Court, and was at the time of so signing same, and that said Certificate is in due form of law.

IN TESTIMONY OF ALL OF WHICH I hereunto sign my name and affix my official seal at office, in the City of Dallas, Dallas County, Texas, on this the 7th day of November, A. D. 19

BILL SHAW
/s/ Bill Shaw
Clerk of the District Courts
of Dallas County, Texas

(SEAL)